

SENATE BILL NO. 15

INTRODUCED BY A. BISHOP

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATING TO CRIMINAL TRESPASS TO PROPERTY; REVISING THE DEFINITION OF "ENTER OR REMAIN UNLAWFULLY"; PROVIDING THAT UNLESS PRIVATE LANDS THAT ABUT PUBLIC LANDS ARE CLEARLY MARKED AS PRIVATE, ENTRY ONTO THE PRIVATE LANDS IS NOT CRIMINAL TRESPASS; PROVIDING THAT UNLESS PRIVATE LANDS THAT ABUT A PUBLIC ROAD ARE FENCED OR OTHERWISE ENCLOSED, ENTRY ONTO THE PRIVATE LANDS IS NOT CRIMINAL TRESPASS; AND AMENDING SECTIONS 45-6-201 AND 77-1-806, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-6-201, MCA, is amended to read:

"45-6-201. Definition of "enter or remain unlawfully". (1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when ~~he~~ the person is not licensed, invited, or otherwise privileged to do so. Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post notice denying entry onto private land or to fence off or otherwise enclose the private property. The privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(2) ~~To~~ Except as provided in subsection (3), to provide for effective posting of private land through which the public has no right-of-way, the notice provided for in subsection (1) must satisfy the following requirements:

(a) notice must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the entire post must be painted; and

(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(3) To provide for effective posting of private land that abuts public land, the notice provided for

1 in subsection (1) must:

2 (a) satisfy the requirements of subsection (2)(a); and

3 (b) be placed at regular intervals along the adjoining border so that each notice is visible from the
4 adjoining notice and is at a distance not to exceed 250 feet between notices.

5 ~~(3)~~(4) To provide for effective posting of private land through which or along which the public has
6 ~~an unfenced~~ a right-of-way by means of a public road, a landowner shall:

7 ~~—— (a) place a conspicuous sign no closer than 30 feet of the centerline of the roadway where it~~
8 ~~enters the private land, stating words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING~~
9 ~~OFF ROAD NEXT ____ MILES"; or~~

10 ~~—— (b) place notice, as described in subsection (2)(a), no closer than 30 feet of the centerline of the~~
11 ~~roadway at regular intervals of not less than one-fourth mile along the roadway where it borders unfenced~~
12 ~~private land, except that orange markings may not be placed on posts where the public roadway enters~~
13 ~~the private land~~ fence off or otherwise enclose the private land.

14 ~~(4)~~(5) If property has been posted or fenced in substantial compliance with ~~subsection~~ subsections
15 ~~(2) or (3)~~ through (4), it is considered closed to public access unless explicit permission to enter is given
16 by the landowner or ~~his~~ the landowner's authorized agent.

17 ~~(5)~~(6) The department of fish, wildlife, and parks shall attempt to educate and inform all persons
18 holding hunting, fishing, or trapping licenses or permits by including on any publication concerning the
19 licenses or permits, in condensed form, the provisions of this section concerning entry on private land. The
20 department shall use public media, as well as its own publications, in attempting to educate and inform
21 other recreational users of the provisions of this section. ~~In the interests of providing the public with clear~~
22 ~~information regarding the public nature of certain unfenced rural rights-of-way, the department may~~
23 ~~develop and distribute posting signs that satisfy the requirements of subsection (3).~~

24 ~~(6)~~(7) For purposes of this section, "land" means land as defined in 70-15-102.

25 ~~(7)~~(8) In no event may civil liability be imposed upon the owner or occupier of premises by reason
26 of any privilege created by this section."

27

28 **Section 2.** Section 77-1-806, MCA, is amended to read:

29 **"77-1-806. Prior notification to lessee of recreational use -- trespass -- penalty.** (1) If a lessee of
30 state lands under this part desires to be notified prior to anyone entering upon ~~his~~ the leasehold, the lessee

1 shall post, at customary access points, signs provided or authorized by the department. The signs must
2 set forth the lessee's or ~~his~~ the lessee's agent's name, address, telephone number, and method of
3 notification. The lessee or ~~his~~ the lessee's agent ~~shall make himself~~ must be available to receive notice
4 from recreational users or provide an alternative means for notice as prescribed by rule. When state land
5 is posted, recreational users shall contact and identify themselves to the lessee or ~~his~~ the lessee's agent
6 for the purposes of minimizing impact upon the leasehold interest and learning the specific boundaries of
7 adjacent unfenced private property.

8 (2) Each recreational user of state lands shall obtain permission of the lessee or ~~his~~ the lessee's
9 agent before entering the adjacent private property owned by the lessee. ~~Entry~~ If adjacent private property
10 is posted as required by 45-6-201(3), entry to private property from adjacent state lands without
11 permission of the landowner or ~~his~~ the landowner's agent is an absolute liability offense. A violator of this
12 subsection is guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500, imprisoned
13 in the county jail for not more than 6 months, or both.

14 (3) A person may be found guilty of the offense described in subsection (2) regardless of the
15 absence of fencing ~~or failure to post a notice in accordance with 45-6-201.~~"

16 - END -